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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Advanced Television Systems) MM Docket No. 87-268
And Their Impact Upon The)
Existing Television Broadcast)
Service)

To: The Commission

**OPPOSITION TO PETITION FOR PARTIAL RECONSIDERATION
AND SUPPLEMENT THERETO**

Western New York Public Broadcasting Association ("Association"), through its attorneys, files herewith its Opposition to the Petition for Partial Reconsideration ("Petition") filed by Jet Broadcasting Co., Inc. (Jet), and Supplement thereto, filed in the above-captioned proceeding, which adopted the Digital Table of Allotments and related technical rules regarding the digital television broadcast service. In support thereof, the following is shown:

1. The Association is the licensee of public television Stations WNED-TV, Channel 17, and WNEQ-TV, Channel *23, at Buffalo, New York. In addition, the Association has a pending application, filed July 25, 1990, for a new public television station on Channel *46 at Jamestown, New York (File No. BPET-900725), pursuant to the Commission's policy in Order, Advanced Television Systems, RM-5811, FCC mimeo 4074, released July 17, 1987. which stated that the Commission would "consider waiver requests on a case-by-case basis for noncommercial educational channels. . . ."

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2. Jet is the licensee of commercial television Station WJET-TV, Channel 24, Erie, Pennsylvania. It was assigned out-of-core Channel 58 as its DTV allotment. In its Petition and Supplement thereto, Jet urged that the Commission should substitute Channel 42 as the "most feasible" DTV channel for its use at Erie, based upon an attached engineering statement. That engineering statement observed that "The pending application for use of channel 46 at Jamestown, NY was not considered, as acceptance by the FCC requires waiver of the 'freeze', which was in effect at the time." Jet's engineering showing attached to its pleading notes that its proposed Channel 42 use at Erie would be short-spaced to the Association's application for Channel *46 at Jamestown, New York.

3. Jet's showing in support of its proposed use of Channel 42 at Erie is seriously flawed. Its failure to consider the Association's pending application for use of Channel *46 at Jamestown, New York places in doubt the feasibility of the desired change of channel at Erie. The Association's application at Jamestown is pending and valid. It is wholly consonant with the Commission's stated policy in Advanced, supra, favoring utilization of noncommercial educational channels. Channel *46, the channel proposed for primary public television use, has been reserved for noncommercial educational use at Jamestown, New York, for many years. The Association's pending application confirms and assures this noncommercial educational usage. The proposed operation on a satellite basis involves minimal power and would have no appreciable effect upon deliberations in the DTV proceeding. Accordingly, processing of this application furthers the Commission's policies advancing noncommercial educational

television usage without significant impact upon the Commission's DTV policies. Unlike Jet's proposal, which would merely substitute one DTV channel for another DTV channel, the Association's proposed new station is the most efficient means of providing an unserved populace with high quality noncommercial educational programming on a primary rather than a secondary basis.

4. In its Sixth Report and Order, paras 108 and 112, in this proceeding, the Commission indicated that it "will maintain and protect those vacant NTSC allotments that are the subject of pending applications", filed during the application filing period which closed on September 20, 1996. The Commission also stated that it "will avoid creating DTV allotments that would conflict with proposed new NTSC allotments". In addition, the Commission stated that its "DTV Table replaces existing vacant noncommercial NTSC allotments where feasible, in a manner similar to the approach suggested the Joint Commenters" and AAPTS. These Commission pronouncements bespeak firm Commission support for proposals such as the Association's proposed operation at Jamestown for noncommercial educational service on a reserved channel. These Commission pronouncements also underscore the Commission's determination to avoid the creation of DTV allotments, such as Jet's proposal at Erie, which would conflict with the Association's planned use of reserved Channel *46 at Jamestown, New York.

5. The Association has been waiting for over seven years for final and favorable Commission action upon its pending application. It urges the Commission to act swiftly to confirm the protection for DTV purposes of that pending application. Only in this manner will the Commission be able to provide assurance that entities such as the

Association "who have begun to invest in new stations, including those planning noncommercial stations, may continue to pursue their ongoing station development projects". Sixth Report, supra, at para. 112.

6. The Association desires to stress that it does not oppose alternative core channels at Erie for Jet, so long as the Association's proposal for noncommercial educational television use at Jamestown is not jeopardized. Jet has indicated in its filing that several channels other than Channel 42 may facilitate practical construction of Jet's DTV facility at Erie. Insofar as these other channels would aid Jet without impairing the Association's proposal at Jamestown, the Association would have no objection to a change of DTV channels by Jet at Erie.

WHEREFORE, for all of the reasons set forth above, the Association urges the Commission to reject Jet's proposed use of Channel 42 at Erie, Pennsylvania because of its adverse impact upon the Association's pending proposal for a new noncommercial educational television station on Channel *46 at Jamestown, New York.

Respectfully submitted,

WESTERN NEW YORK PUBLIC
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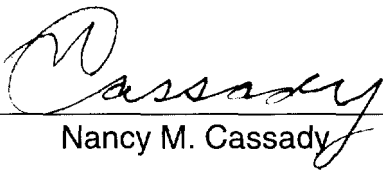
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Its Attorneys

CERTIFICATE OF SERVICE

I, Nancy M. Cassady, Secretary in the law offices of Schwartz, Woods & Miller, hereby certify that I have on this 23rd day of September, 1997, sent by First Class United States mail, postage prepaid, copies of the foregoing **OPPOSITION TO PETITION FOR PARTIAL RECONSIDERATION AND SUPPLEMENT THERETO** to the following:

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